

**APPROVED**

**STATE ADVISORY COUNCIL ON THE EDUCATION OF CHILDREN WITH  
DISABILITIES**

**November 3, 2006  
Carmel Educational Service Center  
Indianapolis, IN**

**ADVISORY COUNCIL MEMBERS PRESENT:**

Bob Marra Karol Farrell, Kathy Mears, Steve Tilden, Stephanie Beasley, Dawn Downer, , Becky Kirk, John Nally, David Schmidt, Julie Swaim, Jane Swiss, Bret Lewis, Gary Bates, Mary Ramos, Cheryl Shearer, Rich Burden; Marcia Johnson, Lilia Tentinty, Rebecca Kirby, Christina Endres, Bessie Henson, Carol Wild for David Geeslin

**ADVISORY COUNCIL MEMBERS NOT PRESENT:**

Cathleen Hardy Hansen, Cynthia Diamond, Martha Farris, Sarah Renner, David Geeslin, James Hammond

**DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:**

Paul Ash, Nina Brahm, Becky Reynolds, Alexandra Curlin, Kylee Bassett

**GUESTS:**

Sharon Knoth

**VISITORS**

Gary Collings (ISEAS), Susan Lockwood (IDOC), Susan Pieples (Autism Society of Indiana), Jennifer Akers (Parent)

**INTERPRETERS:**

Randy Nicolai and Kellyeanne Norrod

**MEETING**

D. Schmidt opened the meeting at 9:45 a.m.

## **MINUTES**

The minutes from the October 6, 2006, meeting were approved as a correct document.

## **HOUSEKEEPING**

D. Schmidt announced that D. Geeslin was unable to attend and that Carol Wild would be attending the meeting on his behalf.

## **PUBLIC COMMENT (Audience comments, if any)**

D. Schmidt made note to copies of comments sent by e-mail that were located at the back of the room.

No comments from visitors were made.

## **ARTICLE 7 DISCUSSION**

SAC discussed the following issues:

### **511 IAC 7-21-1: Parent and community participation**

B. Marra read the changes that were made on the language of changing “may” to “shall.”

G. Bates asked for clarification on at 511 IAC 7-36-1 (a)(4). B. Marra said that it is interagency collaboration with various agencies on a local level not just a state level

R. Burden would like for “may” to be a “must.”

R. Kirby suggested that parents of children with disabilities be added Bob said that SAC can put anything in these changes but the State Board may not accept the language.

J. Swaim said that having been on several committees there were some topics that were too specific that made it hard to keep people coming to those meetings. She said that if it is mandated then people stop talking and will not come to the meetings.

K. Farroll said that she is in full support of parent participation.

G. Bates said if you say “must” and they don’t do it, then do the parents have the right to file complaint. B. Marra said yes they could file a complaint.

S. Beasley said that maybe that would bring more focus to the meetings if it were mandated. She added that there should be an agenda.

D. Downer asked if mandating would make it valuable? She suggested leaving the language as “may,” but if they do not have a PAC then they must include individuals with disabilities or parents of children with disabilities in their improvement plans and committee through NCLB.

J. Swiss recommended the language below.

**Because public agencies are required under PL 221 and NCLB to involve parents in decision-making, public agencies should provide meaningful opportunities for parents of students with disabilities to participate in school decision making committees.**

R. Burden stated that in many instances because there hasn’t been structure provided there are individual issues that make it virtually impossible to focus your attention on the matters at hand rather than issues that may not be appropriate for that group.

L. Tentity said that she agrees to using a statute or an article of statute to prescribe what the people must do. I think that is the point of a statute. To put things in that say you “may” or “you can” or “we would really like it if you” can weaken the document so why put it in there at all. Not to say that this isn’t valuable. If it is a “may” either they are doing it anyway or they have decided they are not going to do it. So if that is the recognition then fine leave it as “may” but recognize that you are not having the impact you want to have with the article of state law.

R. Burden agreed.

J. Swaim added that they could take the parent that is always compliant and that it is not going to mean anything unless it gets to the parents and they are told they need to be going and ask to be put on these committees. Until parents are motivated to go and participate in a positive way no change will occur. That would reflect on parent training and student training and self advocacy. D. Schmidt believes that whatever is encapsulated in that first part and in the discussion he feels that gives them the walking orders to come back with something that says this. B. Marra said that what he would like the SAC to do is take this conversation, P.L. 221, and NCLB back with some thoughts and we will come back with a better draft rather than trying to draft as we talk. We have to vote sometime but we also have to move forward. B. Marra added that there is a delicate balance and you as council will make that decision. B. Marra

feels that there was a good discussion to take back with you and bring back with additional discussion that we can make decisions on when we return to this rule. It was moved to bring this back at a later date.

K. Farrell said that she would like to ensure that NCLB and PL 221 actually require what we say they require at the beginning of the paragraph.

### **511 IAC 7-21-3: School calendar; instructional day**

B. Marra stated that the first part of the language added charter schools.

B. Marra wanted SAC to consider the language from the mark-up at (e)(1)-(3)

R. Burden was concerned about deleting information about the special circumstances because he wasn't sure that people would know about the technical assistance document.

B. Marra said that instructional day is the same. We do know that children need an adjusted day so the case conference basically takes care of that. Bob asked SAC to review section three. Bob said that the case conference committee may need to decide if an adjusted day is needed.

B. Marra stated that there is a guideline book to discuss ESY.

K. Farrell wanted clarification on special circumstances on number (3). (A) my understanding is that you are determining by services you are not considering one disability over another. B. Marra said correct. K. Farrell continued that she understands (B); (C) is this a question of educational need or a parental need; (D) needs a clearer definition of what that includes does that possibly include camp; (E) is a question of why service or activity would benefit a child to participate with a nondisabled peer member; (H) she feels a better definition of that as well because care takers that say I will work for you for 10 months but not for 12 months but does that get into an ESY issue or a personnel issue.

C. Endres stated with regard to (3)(C) and said from working with the homeless program that she is concerned of parenting issues possibly and that it weighs out kids who are homeless because they do have different educational needs than the permanently housed kids which is clearly the case. So to her (3)(C) is not necessarily well worded. But something that she would like to see from that stand point because that is what her program does to make sure those kids get those extra service that they need to make sure that they can keep up with the other kids. That is also what Title I does. She feels that it is still inconsistent with other federal law in terms of providing extra services to homeless because they have higher needs than permanently housed kids.

K. Farrell said that she understood C. Endres' point.

C. Endres added that she misstated she meant to say that Title I and her program both make efforts to provide services or make sure that services are provided to homeless children, however, that does not necessarily include summer programming.

B. Marra asked with regard to leaving the language to (3) in but taking out the list and referencing the guideline document.

Move for vote.

Deleting list and retaining 1, 2, 3.

8 approved 5 opposed

R. Burden asked if there is any way to put in the rule to refer to guideline document. B. Marra said that yes, maybe as a reference on our website. C. Endres asked for clarity on the list in the guidelines. B. Marra agreed.

K. Mears said that it should also state that it applies to non-public students as well. D. Schmidt agreed.

#### **511 IAC 7-21-5: Facilities**

B. Lewis asked if there is language with regard to intruders and lock-in rules.

K. Farrell motioned that the language be listed as written. J. Swiss seconded.

B. Lewis asked if all instructional group i.e charter or private schools were included. N. Brahm said that the rules are only for school corporations. B. Marra said that we will take it back to P. Baxter for clarification in this rule.

B. Lewis stated that as a state agency involved with special needs kids we have an obligation to make sure that kids in private and charter schools can get out of those buildings as well.

S. Beasley said that maybe everything in Article 7 should read that it apply to charter or private where excluded. B. Marra replied as to making it an overall statement for Article 7. B. Lewis asked if IDOE would have the authority to do so. B. Marra said that probably not on private but would on charter schools. He stated that this issue would be brought back at a later date.

R. Kirby still would like it to say if necessary to be included in the child's IEP. B. Marra said that we could maybe put it in the IEP section. This is a plan for the building. They have to look at the school as a whole with the special children and how you are going to address the children with special needs in this building when they are writing this plan.

K. Mears brought up the issue of accredited v. non. If you are an accredited private school then you have to follow almost all the same rules and regulations. If you are not accredited then you do not.

Unanimous vote to approve language.

### **511 IAC 7-21-6: Instructional curricula, material, assistive technology**

Bob spoke with regard to the digital text on the NIMAS.

S. Tilden asked if this included audio. Bob said yes, it depends on the player the hardware/software that you have for your technical system. J. Swaim asked why is captioning not included? B. Marra said that is what the federal regulations say. B. Marra stated that if she wanted to make the motion to go beyond it could be done. J. Swaim said that she thought that it was worth going beyond. D. Schmidt asked if she would like to make it a motion to go beyond federal language to include closed captioning. B. Lewis asked if that would be a state mandate. B. Marra said that it wouldn't impact text it would impact video. B. Lewis said that if the state picks up something that is not federal required would the state consider because of the cost. B. Marra said that yes you would have to consider the fiscal impact. B. Marra asked Carol Wild how this situation is handled at the deaf school. She replied that if it is not captioned an interpreter has to sign the tape.

R. Burden asked with regard to the responsibility of maintenance for a student's hearing aid. J. Swaim said that the teachers made sure her son's was turned on when he arrived to class. C. Wild stated that they check to see that hearing aids are working properly and keep batteries on site.

Vote 10 approved 3 opposed B. Lewis and M. Johnson abstained.

### **511 IAC 7-19-1: Special education for students in private schools**

B. Marra said that consultation should be looked at as a service. There has to be a consultation with private schools and a consultation with a private school must be timely and occur before the public agency makes any of those decisions. The other key words in the language are "must be meaningful and include the genuine opportunity for the parents of parentally placed private school students to express their views." That language came from OSEP question and answer.

K. Farrell asked about the timely consultation occurring before the public agency makes a decision. What is an LEA to do when the notification has been provided yet the private school does not respond? Can there be a certain number of contacts the LEA should do first and then, if no response (or after reasonable attempts) the LEA can move forward? There needs to be some information regarding contact made with all private schools. Some LEAs have interpreted it

to mean that if they send an invitation out, and only one private school representative shows up they are in compliance.

K. Mears said that “all” private schools need to be added. Schools sometime take that to mean that they just have to have private school representation. K. Mears added that there have been LEAs who tell the private school that they must assess the public school students before they assess private school students conducted. K. Mears surveyed the private schools. The results showed that the 60-day timeline was not met.

B. Marra indicated that it is the timeliness that is the issue. What should be the reasonable period of time? How long should the LEA be required to wait until they begin serving the student?

R. Burden asked if there could be a pro and con overview? B. Marra said yes, he would like to get through an overview of Rule 19 and then he would like everyone to think about the pros and cons that we discuss and next month to vote on the language. This is a very complicated rule.

B. Marra said that with regard to the language “to the extent appropriate” may need to be revisited. Although it looks a lot like an IEP it is not FAPE – it is a service plan. K. Mears indicated that the LEA does not have to even offer a FAPE to a student who is not a legal resident of the district. K. Farrell concurred but said that she thinks she should show the family what the FAPE would look like. How would she know that a child in her district attends a non-public school outside of her district; how does she know that the family understands what FAPE looks like for their son/daughter? B. Marra stated that she would have no responsibility unless the family came directly to her. Then she would need to make sure they understand what FAPE would look like. K. Mears indicated that schools need to be really clear that a service plan is not an IEP – so students do not get the accommodations they would on ISTEP where the child with an IEP would. R. Burden asked if he was a parent with a service plan in district “X” but he resides in district “A” can he as the parent take that service plan to his district “A” and ask that the “X” plan be implemented in his home school corporation? B. Marra said yes, but the parent may also want to know clearly what FAPE would be like in their school district.

B. Marra stated that the federal proportionate share is required, but state was added as well. When you add in the state the LEA will generate ‘x’ amount of dollars for that student. An argument from the non-public schools is that the amount generated is not allocated or used for non-public school students. An argument that Bob has heard is that the money is used to facilitate the consultations.

K. Farrell asked if public agencies will be required to spend a proportionate share of state special education funds, should the cost of child find activities count

towards the calculation of proportionate share. B. Marra indicated it should probably also say evaluations. However, if they use all of their funds for evaluations how many evaluations can be conducted? B. Marra indicated that he does not know an exact amount expended on evaluations. K. Farrell asked whether the Child Find and the evaluation language would also include independent evaluations (the cost to reimburse parents for them). B. Marra indicated that this is a SAC determination. In prior years there was a misperception that because a non-public school student came to an LEA for trigonometry the school would count them for ADM. The General Assembly changed this and developed a formula for calculating ADM based on number of hours the student attends the public school. This is fairly simple at the high school level but it becomes more difficult with special education due to transportation, evaluations, LRE, etc. B. Marra added that the federal language is very clear that once the proportionate share is expended, the LEA's obligation is fulfilled. Hypothetically it could be spent on one significantly involved student.

M. Johnson asked about student mobility. What if a child comes after the December 1 count? B. Marra stated that you still have to serve him/her even if it is in a private school that has recently opened.

B. Marra stated that the LEA must serve any child in a private school that is in the catchment area of the LEA. The obligation of private schools vs. the obligation of public schools vs. the issue of FAPE is the issue. Just because you are in a private school does not absolve the LEA of the requirement to look at that child to determine if they are in need of a FAPE. B. Lewis asked for a definition of a public school, a private school, accredited vs. non-accredited and what 'rights' follow each. What about religious schools that are institutional or residential schools? Is home school included in this? B. Marra stated that home school students are considered private school students. Another definition of a private school is a school that is not in a charter or public school.

K. Farrell asked about (e)(6) – how the public agency will provide to the public school. She added that there are disagreements on the services being offered by the public school, which services are being described. Is this the FAPE offered in the public school or just the services offered in the private school? B. Marra indicated that it is the services that were discussed in the consultation with the private school and then subsequently developed into the service plan for the individual child. K. Farrell asked if you have to split the proportionate share evenly with every non-public in the LEA jurisdiction. B. Marra stated that is the director's prerogative.

K. Farrell asked if the consultation should be in person or via telephone. We need to be more specific. K. Mears agreed. When an LEA has multiple schools to deal with, it is infinitely easier to meet with the private schools in a group situation. B. Marra also indicated that the LEA can also contract for the provision of the services.



B. Marra stated that the non-public school can file a complaint with DEL if they believe that the consultation was not meaningful. The non-public school can even file a complaint with the US DOE should they disagree with the results of the complaint investigation.

B. Marra said that one issue is private preschools and the school corporation serving all private preschools. In the last rewrite, Indiana did not define private preschool. In this rewrite, we used the federal language: Private preschools are preschool programs that are part of an elementary school.

This rule will be revisited.

## **ARTICLE 7 COMMENTS FROM THE PUBLIC**

No comments were made.

### **Additional Article 7 Discussion**

B. Marra requested that SAC consider that after the first draft is ready that we have public meetings, please note that it is not a public hearing because that is what the State Board will do. Bob would like SAC to consider the latter part of August or early September to hold public meetings to receive feedback. We do have the website but sometimes that doesn't stimulate enough comment. He would like for R. Burden and R. Kirby to consider how to assure that parents are aware of the e-mail. B. Marra restated that he would like SAC to consider public meetings and a timeframe for those public meetings.

**MEETING ADJOURNED AT 2:45 P.M.**